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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/720,906	01/02/2001	Pieter Wilhelmus Johannes Smak	B0-42001	7281

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EXAMINER

GRILES, BETHANY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/13/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/720,906

Applicant(s)

SMAK, PIETER WILHELMUS
JOHANNES

Examiner

Bethany L. GILES

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 29 July 2002 have been fully considered but they are not persuasive. The invention as claimed is disclosed by the art of Watkins, Williams, and Beljaars. Please see the office action below for further clarification on the examiner's position.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 26 and 36 recite the limitation "accommodation" in line 3 of claim 26 and claim 36. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Watkins (USP 5,787,641).

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Regarding claim 26, Watkins discloses a plastic body 10 having a number of accommodations 40 with an insertion opening for the plant (fig 2) and is at least partially open at the bottom 18; characterized in that the bottom is delimited by a cutting edge 42 acting in the direction in which the plant is removed. Watkins discloses a clamping means 40.

Regarding claim 27, Watkins discloses plates 42 extending increasingly further into the accommodation.

Regarding claim 28, Watkins discloses that the plates 42 are substantially perpendicular to the peripheral boundary 12.

Regarding claim 29, Watkins discloses that the clamping means have sharp cutting edges (see fig 1).

Regarding claim 30, Watkins discloses at least three clamping means (see fig 1).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 31, 32, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins.

Regarding claims 31 and 38, Watkins does not disclose that the walls are of a thickness of less than 2.5 mm.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the walls of the boundary of a thickness of 2.5mm, or of any other range of thicknesses to afford the user with a cutting edge. It would be an obvious matter of design choice to select 2.5mm as the thickness of the boundary walls.

Regarding claim 32, Watkins does not disclose that the strips of material 42 are fixed at the top of the accommodations.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to produce the accommodations with the strips attached at the top as opposed to further down the accommodation as disclosed by Watkins (see fig 1), as it would be an obvious matter of design choice and would not affect the performance of the apparatus.

Claims 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins in view of Williams (EU 195,693).

Regarding claim 33, Watkins discloses the accommodations 40.

Watkins does not disclose that they are hexagonal.

Williams discloses that the accommodations are hexagonal (see fig 2b).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Williamses to the invention of Watkins in order to make maximum use of the space available.

Regarding claim 34, Watkins discloses the accommodations 40.

Watkins does not disclose that the clamping means 42 extend from a corner point of a hexagon.

Williamses discloses that the means extend from corners of the hexagon 14 (see fig 4c).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Williamses to the invention of Watkins in order to have a strong site at which to secure the means to the apparatus.

Claims 35, 36, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins in view of Beljaars (EP 565,201).

Regarding claim 35, Watkins discloses the accommodation 40.

Watkins does not disclose that the accommodation is for a tulip bulb.

Beljaars discloses that the accommodation is for a tulip bulb (see abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Beljaars to the invention of Watkins in order to use the invention in the shipping and cultivation of tulip bulbs or any other bulbous plant.

Regarding claim 36, Watkins discloses a plastic body 10 having a number of accommodations 40 with an insertion opening for the plant (fig 2) and is at least partially

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open at the bottom 18; characterized in that the bottom is delimited by a cutting edge 42 acting in the direction in which the plant is removed. Watkins discloses a clamping means 40.

Watkins as modified by Beljaars discloses that free space is delimited between the bottom of the tray and the base of the container 5 (see fig 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Beljaars to the invention of Watkins in order to allow the roots to achieve maximum growth prior to the bulbs being harvested.

Regarding claim 37, Watkins as modified by Beljaars discloses that free space is common to at least a number of said accommodations 3 at the bottom (see fig 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Beljaars in order to make use of space and raise the most bulbs possible in a confined space such as the tray.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703.308.2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703.306.4196 for regular communications and 703.305.3597 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.306.5771.

Bethany L. Griles
Examiner
Art Unit 3643

blg
September 5, 2002

A handwritten signature in black ink that reads "Kurt Rowan". The signature is written in a cursive, flowing style.

KURT ROWAN
PRIMARY EXAMINER
GROUP 3200